

Internal Revenue Service

Department of the Treasury

Washington, DC 20224

199917078

Uniform Issue List Number:
4941.04-00

Contact Person:

Telephone Number:

In Reference to: OP:E:EO:T:2

Date: JAN 29 1999

Legend:

B =
H =
N =
W =
E =

Dear Sir or Madam:

This is in reply to your request of August 27, 1998, as revised on January 19, 1999, for a ruling that there will be no act of self-dealing under section 4941 of the Internal Revenue Code in regard to the proposed settlement agreement concerning claims against the estates of H and W.

H and W were husband and wife. W filed a claim against H's estate for her state law statutory share of his estate as his widow. Also, B, a brother of W, and N, a niece of W, brought a lawsuit to contest the validity of W's will. E is one of the organizations exempt from federal income tax under section 501(c)(3) of the Code that is a beneficiary under the wills of H and W.

You indicate that a beneficiary organization, such as E, may be a private foundation under section 509(a) of the Code and the estates of H and W may be disqualified persons under section 4946 of the Code with respect to E, in which event you ask assurance that the settlement agreement will not be an act of self-dealing under section 4941 of the Code.

Under the settlement agreement, H's estate will pay W's estate to settle her claim, and W's estate will pay B and N to preclude litigation contesting W's will. The settlement agreement has the approval of all of the parties, including the exempt organizations under section 501(c)(3) of the Code that are beneficiaries under the wills of H and W, and the settlement agreement will be approved by the state probate court(s).

Section 501(c)(3) of the Code provides for the exemption from federal income tax of nonprofit organizations organized and operated exclusively for charitable and/or other exempt purposes stated in that section.

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Section 509(a) of the Code describes private foundations exempt from federal income tax under section 501(c)(3) of the Code and subject to the private foundation provisions of the Code, including section 4941 of the Code.

Section 4941 of the Code imposes excise tax on any act of self-dealing between a private foundation and any of its disqualified persons as defined under section 4946 of the Code.

Section 4946 of the Code and section 53.4946-1(b) of the Foundation and Similar Excise Taxes Regulations provide that a disqualified person with respect to a private foundation includes a substantial contributor, a foundation manager, and any disqualified person's spouse, parents, children, and grandchildren, but not brothers, sisters, nieces or nephews.

Section 53.4941(d)-1(b)(3) of the regulations, concerning administration of estates, provides that an act of self-dealing does not include a transaction with respect to a private foundation's interest or expectancy in property (whether or not encumbered) held by an estate, regardless of when title to the property vests under local law, if the five requirements below are met:

(i) The administrator or executor of the estate either

(a) Possesses a power of sale with respect to the property,

(b) Has the power to reallocate the property to another beneficiary, or

(c) Is required to sell the property under the terms of any option subject to which the property was acquired by the estate.

(ii) Such transaction is approved by the probate court having jurisdiction over the estate or by another court having jurisdiction over the estate or over the private foundation.

(iii) Such transaction occurs before the estate is considered terminated for federal income tax purposes pursuant to section 1.641(b)-3(a) of the Income Tax Regulations.

(iv) The estate receives an amount which equals or exceeds the fair market value of the foundation's interest or expectancy in such property at the time of the transaction, taking into account the terms of any option subject to which the property was acquired by the estate.

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(v) The transaction either:

(a) Results in the foundation receiving an interest or expectancy at least as liquid as the one it gave up,

(b) Results in the foundation receiving an asset related to the active carrying out of its exempt purposes, or

(c) Is required under the terms of any option which is binding on the estate.

The five requirements of the estate administration exception to self-dealing under section 53.4941(d)-1(b)(3) of the regulations, stated above, will be met in this case. First, each executor possesses a power of sale with respect to estate property. Second, the settlement will be approved by a probate court(s) having jurisdiction over the estates. Third, the settlement will occur before the estates are considered terminated for federal income tax purposes under section 1.641(b)-3(a) of the regulations. Fourth, the estates and the exempt organizations will not give up any of the fair market values of their interests (other than as a result of this settlement of existing claims). Fifth, the interests of the estates and the exempt organizations under the settlement will remain as liquid as their interests were before this settlement.

Accordingly, we rule that:

1. The terms of the settlement agreement will not result in any act of self-dealing under section 4941 of the Code.

Because this letter could help to resolve any questions about your status, you should keep it in your permanent records.

This ruling is directed only to the organizations that requested it. Section 6110(j)(3) of the Code provides that it may not be used or cited as precedent.

Sincerely,

(signed) Garland A. Carter

Garland A. Carter
Chief, Exempt Organizations
Technical Branch 2

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